IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE EIGHTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE MR JUSTICE BILAL NAZKI
and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 11517 of 2004

Between:

M/S. SRI SATYA BALA KRISHNA GENERAL TRADERS, TANUKU. West Godavari District, Rep. by its Proprietrix Smt. K. Vara Lakshmi, W/o. Satyanarayana Prasad, Aged 38 Years.

..... PETITIONER

AND

1 The Joint Commissioner (CT) (Legal), O/o. The Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad.
2 The Appellate Deputy Commissioner (CT), VIJAYAWADA, Krishna District.
3 The Commercial Tax Officer, No.II Division, TANUKU. West Godavari District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction particularly in the nature of Writ of Mandamus declaring the proceedings of the Joint Commissioner (CT) (Legal), Hyderabad dated 27-05-2004 in Ref.No.LV(2)/1889/2003 rejecting the stay collection of the disputed penalty of Rs. 18,570/- as illegal, arbitrary, unjust, without application of mind and consequently direct the third respondent not to take any coercive steps for realization of penalty in dispute pursuant to the orders of the Second respondent namely Appellate Deputy Commissioner of CT, Vijayawada pending disposal of the TA on the file of Sales Tax Appellate Tribunal and grant such other relief or relieves as are deemed fit and proper in the circumstances of the case.

For the Petitioner:MR.M.V.J.K.KUMAR, Advocate.

For the Respondent Nos. 1 to 3 : The GP FOR COMMERCIAL TAXES

The Court at the stage of admission Made the Following :

ORDER : (Per Sri Bilal Nazki, J)

Heard learned Counsel for the parties. With the consent of the parties, the Writ Petition is being disposed of at this stage.

The controversy is that pending an appeal, the application for stay was dismissed by the competent authority. We have gone through the record and found that the amount under demand is only with regard to the penalty and the tax had admittedly been paid. We feel that the interest of justice would have been met if stay was granted pending appeal, subject to deposit of 25% of the liability. Therefore, we set aside the order of the authority and direct that 25% of the liability shall be paid by the petitioner within a period of four weeks. For four weeks, there shall be an unconditional stay and the stay shall continue till disposal of the appeal, provided the amount is deposited within four weeks. The deposit of amount shall be without prejudice to the rights of the petitioner in the appeal.

Writ Petition is disposed of accordingly. No costs.

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(Bilal Nazki, J)

8th July, 2004.

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(P.S.NARAYANA, J)

ajr.

To

1 The Joint Commissioner (CT) (Legal), O/o. The Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad.

2 The Appellate Deputy Commissioner (CT), VIJAYAWADA, Krishna District.

3 The Commercial Tax Officer, No.II Division, TANUKU. West Godavari District.

4 Two C.Cs. to the Government Pleader for Commercial Taxes, High Court Buildings, Hyderabad (O.U.T).

5 Two C.D. copies.